396.

SUPREME COURT OF THE UNITED STATES.

No. 112.

THOMAS MEEHAN AND CHARLES BALLANCE, PL'FFS IN ERROR,

vs.

ROBERT FORSYTH.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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GIDEON, Print.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Pleas in the Circuit Court of the United States for the northen district of Illinois, held at the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, District Judge, and in the absence pro tempore of the Honorable John McLean, one of the Justices of the Supreme Court of the United States of America, sole Judge of said Circuit Court, on Tuesday, the twelfth day of February, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eightieth year.

ROBERT FORSYTH
vs.
THOMAS MEEHAN and CHARLES BALLANCE. } Ejectment.

Be it remembered, that hertofore, to wit, on the tenth day of July, in the July term in the year of our Lord one thousand eight hundred and fifty-five, of said circuit court of the United States for said northern district of Illinois, came into court the said Robert Forsyth, plaintiff, by Messrs. Manning and Merriman, his attorneys, and filed in open court his bond, declaration, and notice in said entitled cause, together with a certificate of service of said declaration and notice, which are in the words and figures following, to wit:

In the Circuit Court of the United States in and for the northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Of the July term, in the year of our Lord one thousand eight hundred and fifty-five, Robert Forsyth, plaintiff in this suit, who is a citizen of the State of Missouri, one of the United States of America, complains of Thomas Meehan, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises:

For that heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-five, the said plaintiff was possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: part of claims sixty-two and sixty-three, in the village of Peoria, as confirmed by the confirmatory act of Congress, approved March 3d, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," described as follows, to wit: commencing on the southeasterly line of Water street, as laid out in Ballance's addition to the

town of Peoria, eighty-eight feet southwesterly from the corner of Chestnut and Water streets, as laid out in said Ballance's addition; thence southwesterly along said Water street forty-two feet ten inches; thence at right angles with said Water street, one hundred seventy-five feet ten inches; thence northeasterly on a line parallel with said Water street forty-two feet ten inches; thence to the place of beginning; and being so possessed thereof, the said defendant afterwards, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and fifty-five, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof; and said plaintiff avers that he claims title to said premises in fee.

And said plaintiff further avers, that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiff says that he is injured and has sustained damages to a large amount, to wit, five hundred dollars, and therefore he sues, &c.

MANNING & MERRIMAN,
Attorney for Plaintiff.

To the above named defendant: Take notice, that—

1. On the 8th day of the present term of the circuit court of the United States within and for the northern district of Illinois, now in session at the city of Chicago, in said State of Illinois, on the 10th day of July, A. D. one thousand eight hundred and fifty-five, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2d. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3d. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c., MANNING & MERRIMAN,
Attorney for Plaintiff.

Dated July 9th, 1855.

STATE OF ILLINOIS, *County of Peoria.*

David D. Jones, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally on the 9th day of July, A. D. 1855.

D. D. JONES, *Sh'ff and C.*

Subscribed and sworn to before me this 9th day of July, A. D. 1855.

A. L. MERRIMAN,
U. S. Commissioner.

(Endorsed:) Filed July 10th, 1855.

WM. H. BRADLEY, *Cl'k.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

Circuit Court, July term, A. D. 1855.

Know all men by these presents that I, A. L. Merriman, of the county of Peoria, and northern district of Illinois, am held and firmly bound unto Thomas Meehan, or to the officers of the circuit court of the United States for the northern district of Illinois, in the sum of five hundred dollars, to be paid to said Meehan or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office: to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally, and firmly by these presents.

Witness my hand and seal, the 10th day of July, in the year of our Lord one thousand eight hundred and fifty-five.

The condition of the above obligation is such, that whereas Robert Forsyth has this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the northern district of Illinois, against Thomas Meehan: now, if the said Forsyth, his heirs, executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in his behalf, if judgment shall pass against the said defendant, and the costs fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation to be void; otherwise of full force and effect.

A. L. MERRIMAN, [SEAL.]

(Endorsed:) Filed this 10th day of July, A. D. 1855.
WM. H. BRADLEY, *Clerk.*

Whereupon, in the record of the proceedings of said circuit court in said entitled cause, on said tenth day of July, in the year of our Lord one thousand eight hundred and fifty-five, the following rule was entered of record, to wit:

ROBERT FORSYTH
vs. } Ejectment.
THOMAS MEEHAN.

Now comes the plaintiff, by his attorney, and files his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of a due service of a true copy of said declaration and notice upon the defendant; and on motion of the plaintiff, by his attorney, it is considered and adjudged by the court that the cause be docketed, and that the defendant plead thereto within twenty days or that his default be entered.

And afterwards, to wit, on the eighteenth day of July, in the year

last aforesaid, came the said defendant, by Charles Ballance, his attorney, and filed in said court his plea, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois.

Of the July term, A. D. 1855.

ROBERT FORSYTH
vs.
THOMAS MEEHAN. } In Ejectment.

The said defendant comes, and defends the force and injury, when, &c., and says he is not guilty of the trespass and ejectment in manner and form as the same are therein charged and alleged against ; and of this he puts himself upon the country, &c.

C. BALLANCE,
For Defendants.

(Endorsed:) Filed July 18th, 1855.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on Tuesday, the fifth day of February, in the year of our Lord one thousand eight hundred and fifty-six, of the December term, A. D. 1855, of said circuit court, in the record of the proceedings thereof in said entitled cause the following entry was made, to wit:

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vs.
THOMAS MEEHAN. } Ejectment.

Now at this day come the parties, by their attorneys, and upon issue joined thereupon came a jury of good and lawful men, to wit: N. W. Howell, W. H. Woodbury, Frederick Tuttle, W. S. Steele, Norman Smith, James Michie, C. R. Adams, S. B. Cobb, William Barber, Reuben Taylor, W. J. Heath and D. D. Driscoll, who were duly elected, tried and sworn; and after proceeding in the trial of the cause until the hour of adjournment without concluding, the further trial of the cause is postponed until to-morrow morning.

And on the next day, to wit, on Wednesday, the sixth day of February, in the year last aforesaid, of the December term aforesaid of said circuit court, in the record of the proceedings thereof in said entitled cause, the following entry was made, to wit:

ROBERT FORSYTH
vs.
THOMAS MEEHAN. } Ejectment.

Now come again the jury heretofore empanelled in this cause, and also the parties, by their attorneys, and, after the evidence and argu-

ments of counsel had been heard, the instructions of the court are postponed until to-morrow morning.

And on the next day, to wit, on Thursday, the seventh day of February, in the year last aforesaid, of the December term aforesaid of said circuit court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
THOMAS MEEHAN. } Ejectment.

Now came again the jury heretofore empanelled in this cause, and also the parties, by their attorneys, and after receiving instructions from the court the jury retired to consider of their verdict, and after a short absence they returned into court with the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the premises described in his declaration, to wit: certain premises situated in the county of Peoria, in the State of Illinois, and described as follows, to wit: part of claims sixty-two and sixty-three, in the village of Peoria, as confirmed by the confirmatory act of Congress, approved March 3d, 1823, entitled An act to confirm certain ciaims to lots in the village of Peoria, in the State of Illinois, described as follows, to wit: Commencing on the southeasterly line of Water street, as laid out in Ballance's addition to the town of Peoria, eighty-eight feet southwesterly from the corner of Chesnut and Water streets, as laid out in said Ballance's addition; thence southwesterly along said Water street forty-two feet ten inches; thence at right angles with said Water street one hundred seventy-five feet ten inches; thence northeasterly, on a line parallel with said Water street, forty-two feet ten inches; thence to the place of beginning. We also find the estate established in the plaintiff on the trial to be an estate in fee simple, and we assess the damages of the plaintiff at the sum of one cent.

And the defendant, by his attorney, moves the court for a new trial of this cause.

And afterwards, to wit, on Tuesday, the twelfth day of February, in the year last aforesaid, of the December term aforesaid of said circuit court, in the record of the proceedings thereof, in said entitled cause, the following judgment was entered of record, to wit:

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vs.
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On motion of the defendant by his attorney, and with the assent of the plaintiff by his attorney, it is ordered by the court, that Charles Ballance be made a co-defendant in this suit; and now, the court having fully considered upon the motion of the defendants, by their attorney, for a new trial of this cause, overrules the same, and on motion of the plaintiff, by his attorney, for judgment upon the verdict of the jury, heretofore found and returned, it is thereupon considered by the

court, that the plaintiff have and recover of and from the said defendants possession of the said described land and premises as declared on, and that he have a writ of possession therefor; and that he also have and recover of and from the defendants the said sum of one cent, his damages as aforesaid, together with his costs by him about his suit in this behalf expended, amounting to the sum of , and that he have execution therefor.

And on the same day, to wit, on the twelfth day of July, in the year last aforesaid, said defendant, by his attorney, filed in the clerk's office of said court his bill of exceptions in said entitled cause, in the words and figures following, to wit:

Circuit Court U. S. northern district of Illinois, Dec. T., 1855.

ROBERT FORSYTH }
vs.
THOMAS MEEHAN. }

On the trial of this cause the plaintiff offered in evidence—

1st. The acts of Congress in relation to the village of Peoria, approved May 15th, 1820, and March 23, 1823, to be found in the third volume of the Statutes at Large, pages 605 and 786, respectively.

2d. So much of the third volume of American State Papers, Public Lands, selected and edited by Walter Lowrie, under the authority of the Senate of the United States, as contained the report of Edward Coles, register of the land office at Edwardsville, said report being No. 327, and found on pages 421, 431, of said volume.

To the reading of which or any part thereof the defendant objected, because the same was not properly authenticated, and because there was no law making it evidence; but the court overruled the objection, and allowed the said report to be given in evidence, to which opinion of the court the defendant then and there excepted.

3d. The patent from the United States to the legal representatives of Antoine Lapence, which is as follows:

The United States of America to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a certificate, numbered three, of the register and receiver of the land office at Edwardsville, Illinois, whereby it appears that in the report dated 10th November, 1820, of Edward Coles, register of the land office at Edwardsville, Illinois, the claim of Antoine Lapance is entered as number sixty-three, and the claim of Simon Bertrand to the same lot is entered as number sixty-two; and whereas it further appears, from the certificate aforesaid, that the said Antoine Lapancé is the inhabitant or settler within the purview of the confirmatory act of Congress approved 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," and that it has appeared to the satisfaction of the said register and receiver that the

said inhabitant or settler did not, prior to the said act of 3d March, 1823, receive "a confirmation of claims or donation of any tract of land or village lot from the United States," and that the legal representatives of the said Antoine Lapance, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot which is described as follows, to wit: The lot containing twenty-seven thousand four hundred and forty-nine square feet and seven hundredths of a square foot, surveyed and designated as covered by said claims numbers sixty-three and sixty-two, in the southwest fractional quarter of fractional section nine, in township 8 (north,) of range eight east, of the fourth principal meridian, Illinois, according to the survey, approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri:

And whereas, in the confirmatory act aforesaid, of the 3d March, 1823, it is provided, that "nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever, &c.:"

Now, know ye, that in consideration of the premises, and pursuant to the second section of the act aforesaid, of the 3d March, 1823, there is granted by the United States to the said legal representatives of Antoine Lapancé, and to their heirs, the lot of land above described, subject to the proviso aforesaid; to have and to hold the said lot of land, with the appurtenances, unto the said legal representatives of Antoine Lapancé, and to their heirs and assigns forever, subject to the proviso aforesaid.

In testimony whereof, I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of February, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

Seal of United States General Land Office.

JAMES K. POLK.

By the President:

By J. KNOX WALKER, *Sec'y.*

S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded vol. 10, pages 122 and 123.
Ex'd.

To the reading of which patent in evidence the defendant objected, but the court overruled the objection, and the defendant then and there excepted.

4th. A general plat of the French claims, approved Sept. 1st, 1840, and a separate plat of the lot granted in the foregoing patent, which are as follows:

court, that the plaintiff have and recover of and from the said defendants possession of the said described land and premises as declared on, and that he have a writ of possession therefor; and that he also have and recover of and from the defendants the said sum of one cent, his damages as aforesaid, together with his costs by him about his suit in this behalf expended, amounting to the sum of , and that he have execution therefor.

And on the same day, to wit, on the twelfth day of July, in the year last aforesaid, said defendant, by his attorney, filed in the clerk's office of said court his bill of exceptions in said entitled cause, in the words and figures following, to wit:

Circuit Court U. S. northern district of Illinois, Dec. T., 1855.

ROBERT FORSYTH }
vs.
THOMAS MEEHAN. }

On the trial of this cause the plaintiff offered in evidence—

1st. The acts of Congress in relation to the village of Peoria, approved May 15th, 1820, and March 23, 1823, to be found in the third volume of the Statutes at Large, pages 605 and 786, respectively.

2d. So much of the third volume of American State Papers, Public Lands, selected and edited by Walter Lowrie, under the authority of the Senate of the United States, as contained the report of Edward Coles, register of the land office at Edwardsville, said report being No. 327, and found on pages 421, 431, of said volume.

To the reading of which or any part thereof the defendant objected, because the same was not properly authenticated, and because there was no law making it evidence; but the court overruled the objection, and allowed the said report to be given in evidence, to which opinion of the court the defendant then and there excepted.

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Whereas there has been deposited in the General Land Office a certificate, numbered three, of the register and receiver of the land office at Edwardsville, Illinois, whereby it appears that in the report dated 10th November, 1820, of Edward Coles, register of the land office at Edwardsville, Illinois, the claim of Antoine Lapance is entered as number sixty-three, and the claim of Simon Bertrand to the same lot is entered as number sixty-two; and whereas it further appears, from the certificate aforesaid, that the said Antoine Lapancé is the inhabitant or settler within the purview of the confirmatory act of Congress approved 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," and that it has appeared to the satisfaction of the said register and receiver that the

said inhabitant or settler did not, prior to the said act of 3d March, 1823, receive "a confirmation of claims or donation of any tract of land or village lot from the United States," and that the legal representatives of the said Antoine Lapance, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot which is described as follows, to wit: The lot containing twenty-seven thousand four hundred and forty-nine square feet and seven hundredths of a square foot, surveyed and designated as covered by said claims numbers sixty-three and sixty-two, in the southwest fractional quarter of fractional section nine, in township 8 (north,) of range eight east, of the fourth principal meridian, Illinois, according to the survey, approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri:

And whereas, in the confirmatory act aforesaid, of the 3d March, 1823, it is provided, that "nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever, &c.:"

Now, know ye, that in consideration of the premises, and pursuant to the second section of the act aforesaid, of the 3d March, 1823, there is granted by the United States to the said legal representatives of Antoine Lapancé, and to their heirs, the lot of land above described, subject to the proviso aforesaid; to have and to hold the said lot of land, with the appurtenances, unto the said legal representatives of Antoine Lapancé, and to their heirs and assigns forever, subject to the proviso aforesaid.

In testimony whereof, I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of February, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

Seal of United States General Land Office.

JAMES K. POLK.

By the President:

By J. KNOX WALKER, *Sec'y.*

S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded vol. 10, pages 122 and 123.
Ex'd.

To the reading of which patent in evidence the defendant objected, but the court overruled the objection, and the defendant then and there excepted.

4th. A general plat of the French claims, approved Sept. 1st, 1840, and a separate plat of the lot granted in the foregoing patent, which are as follows:

Plat of the new village of Peoria, and such of the out-lots and field-lots in the neighborhood thereof as are connected with said new village, in one continuous survey and description of the out-boundaries of the said town, and continued connection of out-lots and field-lots, situate in sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian.

[*For plat see original, page* 21.]

Description: Begin at the upper end of the southeastern edge of First street, on the northwest bank of lake Peoria; thence N. 46½° W., one hundred feet, to the eastern corner of unclaimed lot A, 420 feet 10 inches, the north corner of said unclaimed lot A at the northeast end of the S. E. edge of Second street, 486 feet 10 inches, to the N. E. end of the N. W. edge of Second street; thence S. 43½° W. with the N. W. edge of Second street, 256 feet 8 inches, to the intersection with the N. E. edge of street A; thence N. 46½° W. with the N. E. edge of street A, 320 feet 10 inches, to the N. W. end of the N. E. edge of said street A; thence S. 43½° W., 66 feet, the north corner of lot No. 66 at the N. W. end of the S. W. edge of said street A, 108 feet 9⅓ inches, the west corner of lot No. 66 and north corner of unclaimed lot C, 322 feet 8 inches, the west corner of unclaimed lot C and the north corner of lot No. 12, 408 feet 2⅔ inches, the west corner of lot No. 12 and the N. W. end of the N. E. edge of street B, 474 feet 2⅔ inches, the N. W. end of the S. W. edge of street B and the north corner of lot No. 8, 709 feet 6 inches, the north corner of lot No. 15, 795 feet and ⅔ of an inch, to the west corner of lot No. 8, which is also the west corner of lot No. 15 and east corner of lot No. 61 and north corner of lot No. 28; thence N. 46½° W. with the N. E. boundary of lot No. 61, 15 chains and 40 links, to the north corner of lot No. 61; thence with the N. W. boundary of lot No. 61 S. 43½° W., 5 chains and 52¼ links, to the west corner of lot No. 61; thence with the S. W. boundary of lot No. 61 S. 46½° E., 4 chains and 94 links, to the north corner of lot No. 51 at the intersection of the N.W. boundary thereof with the S. W. boundary of lot No. 61; thence with the N. W. boundary of lot No. 51 S. 43½° W., 4 chains and 88 links, to the west corner of lot No. 51; thence with the S. W. boundary of lot No. 51 S. 46½° E., 6 chains and 10 links, to the north corner of lot No. 40 at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 51; thence with the N. W. boundary of lot No. 40 S. 43½° W., 3 chains and 23⅓ links, to the west corner of lot No. 40; thence with the S. W. boundary of lot No. 40 S. 46½°

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E., 4 chains 34 links, to the N. W. end of the N. E. edge of street E. on the S. W. boundary of lot No. 40; thence S. 43½° W., 66 feet, to the N. W. end of the S. W. edge of street E and the north corner of unclaimed lot E, 322 feet 8 inches, to the east corner of lot No. 31 at the intersection of the N. E. boundary thereof with the N. W. boundary of unclaimed lot E; thence with the N. E. boundary of lot No. 31 N. 46½° W., 13 chains and 16 links, to the north corner of lot No. 31; thence with the N. W. boundary of lot No. 31 S. 43½° W., 3 chains and 88 links, to the west corner of lot No. 31 at the intersection with the N. W. boundary thereof with the N. E. boundary of lot No. 37; thence with the N. E. boundary of lot No. 37 N. 46½° W., 5 chains and 5½ links, to the north corner of lot No. 37; thence with the N. W. boundary of lot No. 37 S. 43½° W., 7 chains and 66 links, to the west corner of lot No. 37; thence with the S. W. boundary of lot No. 37 S. 46½° E., 6 chains and 67½ links, to the north corner of lot No. 67 at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 37; thence with the N. W. boundary of lot No. 67 S. 43½° W., 6 chains, to the west corner of lot No. 67; thence with the S. W. boundary of lot No. 67 S. 46½° E., 6 chains and 38 links, to the south corner of lot No. 67 on the N. W. boundary of lot No. 64; thence S. 43½° W., 1 chain and 66 links, the west corner of lot No. 64 and north corner of lot No. 20, 7 chains and 61 links, the west corner of lot No. 20 and north corner of lot No. 48, 11 chains and 86 links, to the west corner of lot No. 48; thence with the S. W. boundary of lot No. 48 S. 46½° E., 6 chains and 88 links, the point of intersection of the S. W. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 13 chains and 93 links N. 89½° W. of the corner of fractional sections 9 and 16 on the lake, 8 chains, to the south corner of lot No. 48; thence with the S. E. boundary of lot No. 48 N. 43½° E., 1 chain and 6 links, the point of intersection of the S. E. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 12 chains and 38 links N. 89½° W. of the corner to fractional sections 9 and 16 on the lake, 4 chains and 25 links, to the east corner of lot No. 48 on the S. W. boundary of lot No. 20; thence with the S. W. boundary of lot No. 20 S. 46½° E., 2 chains, to the south corner of lot No. 20; thence N. 43½° E., 5 chains and 95 links, the east corner of lot No. 20 and south corner of lot No. 64, 13 chains and 61 links, the east corner of lot No. 64 and south corner of lot No. 43, 21 chains and 27 links, to the east corner of lot No. 43 and south corner of lot No. 34 at the S. W. end of the N. W. edge of Second street; thence S. 46½° E., 66 feet, the S. W. end of the S. E. edge of Second street and west corner of lot No. 33, 386 feet 10 inches, the south corner of lot No. 33, 491 feet 1⅓ inches, to the lower end of the S. E. edge of First street, on the N. W. bank of lake Peoria; thence along the N. W. bank of lake Peoria the following courses and distances: N. 38° E., 176 links; thence N.

42° E., 432 links; thence N. 17¾° E., 150 links; thence N. 78° E., 72 links; thence N. 47½° E., 417 links; thence N. 37° E., 188 links; thence N. 44¾° E., 2,448 links, to the place of beginning.

Then, for connection with the public surveys, run from said place of beginning along the N. W. bank of lake Peoria the following courses and distances: N. 44¾° E., 1,081 links; thence N. 50¾° E., 1,300 links, to the point of intersection of the section line between sections 9 and 10 with the N. W. bank of lake Peoria, which point is 2,406 links S., 0° 30′ W. of the corner to sections 3, 4, 9 and 10, township 8 north, range 8 east of the 4th principal meridian.

Also from the lower end of the S. E. edge of First street the following courses and distances along the bank of the lake were taken for connection: S. 51¾° W., 198 links; thence S. 39° W., 819 links; thence S. 41¼° W., 216 links; thence S. 49½° W., 287 links; thence S. 85° W., 116 links, to the point of intersection of the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 2,510 links S. 89° 30′ E. of the corner to sections 8, 9, 16 and 17, of said township.

Surveyed on the several days designated in the foregoing separate descriptions of the lots by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this first day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *St. Louis, January 31st*, 1854.

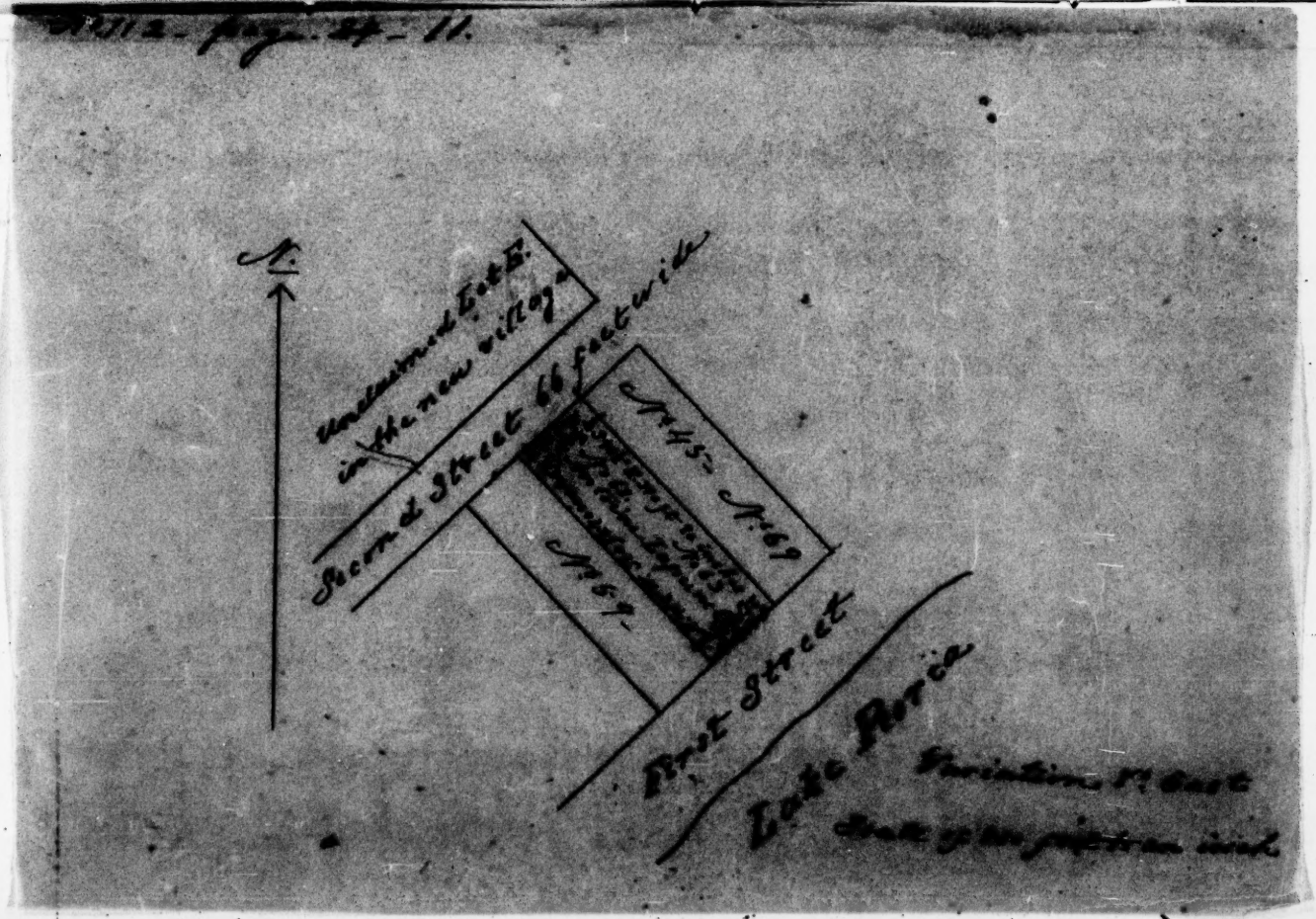
I certify that the foregoing plat of the new village of Peoria, and of such of the out-lots and field-lots in the neighborhood thereof as are connected with said new village, in one continuous survey and description of the out-boundaries of the said town, and continued connection of out-lots and field-lots situate in sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian, are correctly copied from the records of the surveys of Peoria, pages 79 and 80, preserved in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Claim No. sixty-three, situate in the southwest fractional quarter of fractional section 9, in fractional township 8 north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of a lot in the new village of Peoria, in the State of Illinois, confirmed to Antoine Lapancé by an act of Congress, approved the 3d of March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of

Deed Page 44 - 11.



Illinois," it being No. 63 of the report *of* made by the register of the land office at Edwardsville, in pursuance of an act of Congress, approved the 15th of May, 1820, entitled "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois."

[*For plat see original, page* 29.]

Description: Commence at a post in the N. W. edge of First street, which post is the south corner of this lot and east corner of lot No. 59; thence N. 46½° W., 320 feet 10 inches, to a post in the S. E. edge of Second street, which post is the west corner of this lot and north corner of lot No. 59; thence, with the S. E. edge of Second street, N. 43½° E., 85 feet 6 inches and ⅔ of an inch, to a post, the north corner of this lot and west corner of the survey of claims numbered 45 and 69; thence S. 46½° E., 320 feet 10 inches, to a post in the N. W. edge of First street, which post is the east corner of this lot and south corner of the survey of claims numbered 45 and 69; thence, with the N. W. edge of First street, S. 43½° W., 85 feet 6 inches and ⅔ of an inch, to the place of beginning.

This lot contains 27,449 square feet and $\frac{7}{10}\frac{7}{0}$ of a square foot of land, equal to 24,000 square feet French measure, and it is also confirmed to Simon Bertrand—see claim No. 62—the survey of which is identical with this survey.

Surveyed on the 1st of May, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved, this 1st day of September, 1840.

(Signed) WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GEN'L FOR ILLINOIS AND MO.,
St. Louis, 18th April, 1854.

I certify that the foregoing and description of claim No. 63, in the name of Antoine Lapancé, are correctly copied from page 63 of the book of record of surveys in Peoria, Illinois, preserved in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

It was admitted the foregoing plats were authentic, and duly certified from the office of the surveyor general, but the defendant objected to

them as incompetent, but the court overruled the objection, and the defendant then and there excepted.

5th. An agreement of facts which had been made and filed, and is as follows:

U. S. Circuit Court, northern district of Illinois, December T., 1855.

ROBERT FORSYTH
vs. } In Eject.
THOMAS MEEHAN.

It is agreed, for the purposes of this trial only, that on the 3d day of January, 1846, and from thence hitherto, the following were the only surviving heirs of Antoine Lapancé, deceased, to wit: Magdaline Glodon, wife of Nicholas Glodon, Monigue Le Compte, wife of Bazil Lecompte, and John Herbert, son of John and Elizabeth Herbert; that the following are the only surviving heirs of Laurent Pensonneau, deceased, to wit: Elizabeth Pensonneau, Louis P. Pensonneau, Paschal Pensonneau, Mary Louise Byrnes, Francis Pensonneau, Charles Pensonneau, Narcisse Pensonneau, Edward Pensonneau, Joseph Frotiere, Amable Tramble, Adale Paren, wife of Gabriel Paren.

It is further agreed, that only one of said suits to be tried at this time; that said defendants were in possession of the premises sued on, at the time of the commencement of this suit, as tenants of Charles Ballance; that said Ballance, and those under him, have been in possession of said premises for more than ten years last past; that the said Ballance has annually paid all taxes upon the ground covered by said claim 63, under the title derived by said Ballance from the United States, for twelve years last past, but not by the description of said claim 63, the said ground never having been taxed as claim 63, or under any subdivision thereof, and that plaintiff nor those through whom he claims have ever paid any taxes thereon.

The manner of said Ballance's possession has been as follows: the cultivated portions of the quarter section on which said premises are situated as a farm, for more than twenty years, but resided, until about twelve years ago, on the adjoining southeast quarter of said section.

6th. It was then admitted by the defendant that the plaintiff, through different mesne conveyances and legal proceedings, had acquired whatever title was conveyed by the patent before the commencement of this suit.

The plaintiff here rested.

The defendant then offered in evidence—

1st. A certificate of the register of the land office at Quincy, dated April 12, 1836, which is as follows:

LAND OFFICE, QUINCY, ILL., 12 *April*, 1836.

I, Samuel Alexander, register of said office, do hereby certify, that on the 28th day of July, 1832, Charles Ballance claimed and established a right of pre-emption to the southwest quarter of section No. nine, township eight north of the base line, and range eight east of

the 4th principal meridian, as appears by documents on file in my office.

Given from under my hand and seal the day and year aforesaid.

SAM'L ALEXANDER, *Register.* [SEAL.]

2d. A receipt of the receiver of said land office, dated in Nov., 1837, which is as follows:

Pre. act, 1834.—No. 13,293.

RECEIVER'S OFFICE, QUINCY, ILLINOIS,
27th November, 1837.

Received of Charles Ballance, of Peoria county, Illinois, the sum of one hundred and eighty-four dollars and twenty-eight and $\frac{3}{4}$ cents, being in full payment for the southwest fractional quarter of section No. nine, township No. eight north of the base line, of range No. 8 east of the 4th principal meridian, containing one hundred and forty-seven acres and $\frac{43}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

$184 $28\frac{3}{4}$. THO. CARLIN, *Receiver.*

(Duplicate.)

Filed April 6th, A. D. 1854, and recorded in book G A, page 142.

JACOB GALE,
Recorder P. Co.

3d. A certificate of the register of the land office, dated Nov., 1837, which is as follows:

U. S. LAND OFFICE, QUINCY, ILL.,
27th November, 1837.

I do hereby certify that Charles Ballance, of Peoria county, in the State of Illinois, did this day enter or purchase at this office the southwest fractional quarter of fractional section No. 9 in township No. 8 north, of range No. 8 east of the 4th p'l meridian, containing one hundred and forty-seven and $\frac{43}{100}$ acres. Certificate No. 13,293, as appears of record in this office.

SAM'L LEECH, *Register.*

STATE OF ILLINOIS,
County of Peoria.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder of said county, do certify the within certificate is, this 28th day of May, A. D. 1840, duly recorded in said office, in book L, page 186.

CHARLES KETTELLE, *R. P. Co.*

Filed April 6, A. D. 1854, and recorded in G A, page 142.

JACOB GALE, *Recorder P. Co.*

4th. Record copy from county clerk's office, of tax sale, which is as follows:

List of lands and town lots in the county of Peoria and State of Illinois, sold for taxes and costs due the said State and county for the year 1845.

Tuesday, June 16th, 1846, sale opened at 10 o'clock, a. m. Present Smith Frye, sheriff and collector, and William Mitchell, clerk.

Purchasers.	Acres offered.	Description.	Am't sold.	Taxes & costs.
Curtenius & Griswold.....	78	Pt. S. E. 8, 8 N., 8 E.....	9 E. S.	9 58
Charles Ballance.	105 $\frac{63}{100}$	Pt. S. W. 9, 8 N., 8 E. Bounded as follows: Beginning at a stone on the N. line of s'd S. W. quarter section, 92 W. of the N. E. corner thereof; thence running S. 48 deg. E. 56 poles to a stake in the middle of Adams street; thence 48 deg. W. along the middle of Adams street 19 poles to a stake; thence N. 80 degs. W. 17 poles to a stake; thence S. 48 degs. W. to the west line of s'd quarter section; thence south with said line to the southwest corner of said section; thence east to the Illinois river; thence up, along the meanders of said river, to where a line between the S. E. and S. W. sec. 9, 8 N., 8 E. strikes said river; thence N. along said line to the N. E. corner of said q'r section, near Mr. Drown's house; thence west, through said house, to the place of beginning—the first four of said lines being run according to the apparent meridian, but the others according to the real meridian.....	9 E. S.	63 58
John Etting, jr.	20	W. S. N. E. 7; 9 N. 8 E.	5 E. S.	85

STATE OF ILLINOIS,
Peoria County, ss.

CLERK'S OFFICE,

I, Charles Kettelle, clerk of the county court in and for said county, do hereby certify that the foregoing transcript is a correct copy of the sales for taxes and costs on lands therein mentioned in June, A. D. 1846, for the delinquent taxes and costs due thereon for the year 1845, as appears of record in said office.

Given under my hand and official seal, at the city of Peoria, this 31st day of December, A. D. 1855.

[SEAL.]

CHARLES KETTELLE, *Clerk.*

5th. Record copy of circuit court of Peoria county, which is as follows:

At a circuit court begun and held at the court-house in the city of Peoria, in the county of Peoria and State of Illinois, on Monday, the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and forty-six—

Present: the Honorable Gustavus Koerner, associate justice of the supreme court of the State of Illinois, by exchange with the Honorable John Dean Caton, associate justice of the said supreme court and judge of the ninth judicial circuit.

STATE OF ILLINOIS,
Peoria County, ss.

Whereas Smith Frye, collector of said county, returned to the circuit court of said county on the twentieth day of May, A. D. 1846, the following tracts and parts of tracts of land, and town-lots, as having been assessed for taxes by the assessor of said county of Peoria for the year 1845, and that the taxes thereon remain due and unpaid on the day of the date of the said collector's return; and that the respective owners have no goods and chattels within his county on which the said collector can levy for the taxes, interests and costs due and unpaid on the following described lands and town-lots situated in the county of Peoria and State of Illinois, to wit:

Description.	Acres.	Tax.	Costs.
			Cents.
8 N. 8 E.			
Pt. S. W. 9 "	$105\frac{63}{100}$	$63 36	22
Bounded as follows: Beginning at a point stone on the N. line of said S. W. quarter section 92 west of the N. E. corner thereof; thence running S. 48 deg. E., 56 poles, to a stake in the middle of Adams street; thence 48 deg. W. along the middle of Adams street, 19 poles, to a stake; thence N. 80 deg. W., 17 poles, to a stake; thence S. 48 deg. W. to the west line of said quarter section; thence south with said line to the southwest corner of said section; thence east to the Illinois river; thence up along the meanders of said river to where a line between the S. E. and S. W. quar's of sec. 9. 8 N., 8 E., strikes said river; thence N. along said line to the N E. corner of said q'r section, near S. W. Drown's house; thence west, through said house, to the place of beginning—the four first of said lines being run according to the apparent meridian, but the others according to the real meridian.			

And whereas due notice has been given of the intended application for a judgment against said lands and town-lots, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands and town-lots for the taxes, interest and costs due and unpaid thereon for the year herein set forth:

Therefore, it is considered by the court that judgment be, and is hereby, entered against the aforesaid tracts of land and town-lots, in

the name of the State of Illinois, for the sums annexed to each tract or parcel of land or town-lot, being the amount of taxes and costs due severally thereon; and it is ordered by the said court that the said several tracts of land and town-lots, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

And afterwards, to wit, on the tenth day of June, A. D. 1846, there was issued out of said court, under the seal thereof, by the clerk of said court, a precept to the sheriff of said county of Peoria for the sale of the lands under said judgment, which is in the words and figures following, to wit:

At a circuit court begun and held at the court-house in the city of Peoria, in the county of Peoria and State of Illinois, on Monday, the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and forty-six—present, the Honorable Gustavus Koerner, associate justice of the supreme court of the State of Illinois, by exchange with the Honorable John Dean Caton, associate justice of the said supreme court and judge of the ninth judicial circuit.

STATE OF ILLINOIS,
Peoria county, ss.

Whereas Smith Frye, collector of said county, returned to the circuit court of said county, on the twentieth day of May, A. D. 1846, the following tracts and parts of tracts of land and town-lots, as having been assessed for taxes by the assessor of said county of Peoria, for the year 1845, and that the taxes thereon remained due and unpaid on the day of the date of said collector's return, and that the respective owner or owners have no goods or chattels within his county on which the said collector can levy for the taxes, interest and costs, due and unpaid on the following described lands and town-lots, situated in the county of Peoria and State of Illinois, to wit:

Description.	No. acres.	Tax.	Costs.
			Cents.
8 N. 8 E.			
Pt. S. W. 9 "	$105\frac{63}{100}$	$63 36	22
Bounded as follows: Beginning at a stone on the N. line of said S. W. quarter section 92, W. of the N. E. corner thereof; thence running S. 48 deg. E. 56 poles, to a stake in the middle of Adams street; thence 48 deg. W. along the middle of Adams street, 19 poles, to a stake; thence N. 80 degrees W. 17 poles, to a stake; thence S. 48 degrees W. to the west line of s'd quarter; thence south with s'd line to the southwest corner of s'd section; thence east to the Illinois river; thence up along the meanders of said river, to where a line between the S. E. and S. W. quarters of sec. 9, T. 8, R. 8 E. strikes said river; thence N. along said line to the N. E. corner of said qr. section, near Mr. Drown's house; thence west through s'd house to the place of beginning: the four first of said lines being run according to the apparent meridian, but the others according to the real meridian.			

And whereas due notice has been given of the intended application for a judgment against said lands and town-lots, and no owner hath appeared to make defence, or show cause why judgment should not be entered against the said lands and town-lots for the taxes, interest and costs, due and unpaid thereon for the year herein set forth:

Therefore, it is considered by the court that judgment be, and is hereby, entered against the aforesaid tracts and parts of tracts of land and town-lots, in the name of the State of Illinois, for the sums annexed to each tract or parcel of land or town-lot, being the amount of taxes and costs due severally thereon; and it is ordered by the court, that the said several tracts of land and town-lots, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

STATE OF ILLINOIS,
Peoria County, ss.

I, Jacob Gale, clerk of the circuit court of said county of Peoria, do hereby certify that the foregoing is a true and perfect copy of the report of the collector of said county for the taxes of the year 1845, returned into and on file in my office, and of the order of the said circuit court thereon.

In witness whereof I have hereunto set my name and the seal of said court, at Peoria, in said county, this tenth day of June, [L. S.] in the year of our Lord one thousand eight hundred and forty-six.

JACOB GALE, *Clerk.*

Which process was returned into said clerk's office afterwards, to wit, on the twentieth day of June, A. D. 1846, with the said sheriff's return thereunder written, in the words and figures following, to wit:

Return.

STATE OF ILLINOIS,
Peoria County, sct.

By virtue of the foregoing process, I did, with the assistance of the clerk of the county commissioner's court of said county of Peoria, attend at the court-house, in the city of Peoria, in said county, on Tuesday, the sixteenth day of June, A. D. 1846, at the hour of ten o'clock a. m., and proceed to sell each lot or parcel of land described in the foregoing list, (on which the taxes were not paid previous to the day of sale,) at public auction, or so much thereof as was necessary to obtain the amount of taxes and costs due on each, as specified in said list, by offering the whole tract or lot of land for the amount of taxes and costs due thereon, and striking them off to the persons respectively who would pay the amount due on each tract of land or town lot, for the least number of acres or least quantity thereof, commencing with the first lot or tract of land in said list described, and proceeding in the order

the same are therein described to lot number one, in block number one, in the town of Peoria; and afterwards, at three o'clock p. m. of said day, adjourned the sale to ten o'clock a. m. of June 17th, 1846. And on June 17th, at ten o'clock a. m., I proceeded to sell in like manner the remaining lots of land and town lots described in said list, commencing at lot No. one in block No. one, in the town of Peoria, and sold to lot number ten, in block number twenty-seven, in Hale's addition to Peoria, in said list; and afterwards adjourned the sale to ten o'clock a. m. of June 18th, 1846. And on June 18th, 1846, at ten o'clock a. m., I proceeded to sell in like manner the remaining lots of land and town lots described in said list to the end thereof.

The clerk of the said county commissioner's court kept a record of said sales, in which was entered each lot or parcel of land exposed to sale by me as aforesaid, the name of the purchaser, his place of residence, and the quantity of land sold.

Dated at Peoria, this twentieth day of June, A. D. 1846.

SMITH FRYE,
Sheriff of Peoria County, and
Collector for said county for taxes of 1845.

STATE OF ILLINOIS,
Peoria County, ss.

I, Jacob Gale, clerk of the circuit court within and for said county of Peoria, do hereby certify, that the foregoing is a full, correct, and complete transcript from the records of said court of a judgment against the land therein set forth, rendered by said court at the May term, A. D. 1846, for the taxes thereon and costs for the year 1845 unpaid by the owner thereof; and also of the precept issued to the sheriff of said county for sale of said land on said judgment; and also of the said sheriff's return to said precept, as the same are of record and on file in my office.

In witness whereof, I hereto set my hand, and affix the seal of said [SEAL.] circuit court, at my office in Peoria, this 2d day of January, A. D. 1856.

JACOB GALE, *Clerk.*

And the deed founded thereon to Charles Ballance, dated Nov. 10, 1850, which is as follows:

Know men by these presents, *the* whereas, at the May term, A. D. 1846, of the circuit court of Peoria county, a judgment was obtained in said court in favor of the State of Illinois against a certain tract of land of one hundred and five acres and sixty-three hundredths of an acre, being part of the southwest quarter of section No. nine, in township eight north, of range eight east of the fourth principal meridian, bounded as follows, to wit: beginning at a stone on the north line of said southwest quarter section, ninety-two poles west of the northeast corner thereof; thence, running south forty-eight degrees east fifty-six

poles, to a stake in the middle of Adams street; thence forty-eight degrees west, along the middle of Adams street nineteen poles, to a stake; thence north eighty degrees west seventeen poles to a stake; thence south forty-eight degrees west, to the west line of said quarter section; thence south with said line to the southwest corner of said quarter section; thence east to the Illinois river; thence up, along the meanders of said river, to where the line between the southeast and southwest quarters of section nine, in township eight north, of range eight east, strikes said river; thence north, along said line, to the northeast corner of said quarter section, near Mr. Drown's house; thence west, through said house, to the place of beginning—the four first of said lines being run according to the apparent meridian, but the others according to the true meridian—for the sum of sixty-three dollars and fifty-eight cents; being the amount of taxes, interest, and costs assessed upon the said tract of land for the year eighteen hundred and forty-five.

And whereas, on the sixteenth day of June, eighteen hundred and forty-six, I, Smith Frye, then sheriff of said Peoria county, by virtue of a precept issued out of the circuit court of the county aforesaid, dated the tenth day of June, 1846, and to me directed, did expose to public sale, at the door of the court-house in the county aforesaid, in conformity with all the requisitions of the statute in such case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid.

And whereas, at the time and place aforesaid, Charles Ballance, of the county of Peoria, and State of Illinois, having offered to pay the aforesaid sum of sixty-three dollars and fifty-eight cents for nine acres off the east side of said tract of land, which was the least quantity bid for, the said tract of land was stricken of to him, the said Charles Ballance, at that price, and said sum was then and there paid to me by said Ballance:

Now, therefore, I, Smith Frye, late sheriff as aforesaid, for and in consideration of the said sum of money to me in hand paid by the said Charles Ballance at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Charles Ballance, his heirs and assigns, the aforesaid tract of land and appurtenances; to have and to hold the said tract of land and appurtenances to the said Charles Ballance, his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law.

In witness whereof, I, Smith Frye, sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal this tenth day of November, 1850.

SMITH FRYE, *Sheriff.* [SEAL.]

STATE OF ILLINOIS,
Peoria County, ss:

Be it known, that on the day of the date hereof personally appeared before me, Jacob Gale, clerk of the circuit court of said county,

Smith Frye, who is personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance, as having executed the same in the capacity of sheriff of said county, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed.

[SEAL.] In witness whereof, I have hereunto set my hand and seal of said court the date aforesaid.

JACOB GALE, *Clerk.*

6th. It was admitted that the land mentioned in the sheriff's deed would include the land in controversy, provided it were surveyed off the east side of the land advertised and offered for sale for the non-payment of taxes.

7th. The original plat of Ballance's addition to Peoria, which is as follows:

[*For plat see original, page* 54.]

I, George C. McFadden, county surveyor of the county of Peoria, and State of Illinois, do hereby certify that the within plat is a true survey of Ballance's addition to the town of Peoria, as surveyed and laid off by me, on the southwest quarter of section 9, T. 8 N., R. 8 E. of the fourth principal meridian, at the instance of said Ballance, the proprietor thereof, on the 10th day of February, 1846. All the streets, alleys and blocks were by me accurately measured, and are of the dimensions specified on said plat. At the intersection of Walnut and Adams streets, it being the easterly corner of block No. 41, I planted a stone from which to make future surveys; at all the other corners of blocks I caused stakes to be driven down. Although the blocks are divided into lots of sixty feet each on the plat, no corresponding stakes were driven, it being deemed by the proprietor unnecessary.

Given under my hand at Peoria this 10th day of February, 1846.

G. C. McFADDEN, *C. S. P. C.*

Variation allowed in making the above survey, 7° 10′.

I, Charles Ballance, proprietor of the within addition to the town or city of Peoria, do hereby certify and acknowledge that the within a correct plat thereof, surveyed with my consent and under my directions, by George C. McFadden, county surveyor of Peoria county, in the State of Illinois, and that the said streets and alley are hereby vested in the board of aldermen of said city for the use of the public: Provided, however, that I reserve to myself the right to enclose or keep

No. 112. f 20.

enclosed until the public interest shall require them to be opened, of which interest I am to be the judge, all said streets except Adams, Water, Hudson and Chesnut, and all the alleys, except those below Adams street and above Chesnut street: Provided further, that I reserve to myself, my heirs and assigns forever, the exclusive right of establishing bridges, ferriage and fishing on said land, this survey notwithstanding.

In witness whereof I have hereunto set my hand and seal this 10th April, 1846.

C. BALLANCE. [SEAL.]

STATE OF ILLINOIS,
County of Peoria, sct:

Personally appeared before me, Jonathan K. Cooper, a justice of the peace of said county, Charles Ballance, whose name is subscribed to the above acknowledgment as having executed the same, and who is personally known to me to be the same, and acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein expressed.

Dated this 10th day of April, 1846.

JONATHAN K. COOPER, *J. P.*

STATE OF ILLINOIS,
County of Peoria.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder in and for said county, do hereby certify the within plat is duly recorded in said office, in book Q, pages 305 and 306, this 24th day of April, A. D. 1846.

CHARLES KETTELLE, *R. P. Co.*

The defendant here rested.

The plaintiff then offered—

1st. A certified copy of the application of Charles Ballance to the land office, to enter the land by way of pre-emption, subject to the French claimants, which is as follows:

No. 13,293. *27th day of November*, 1837.

I, Charles Ballance, of Peoria county, and State of Illinois, do hereby apply for the purchase of the southwest fractional q'r of section numbered nine, in township numbered eight north, of range numbered eight east of the fourth principal meridian, containing one hundred and forty-seven $\frac{43}{100}$ acres, according to the returns of the surveyor general, for which I have agreed with the register to give at the rate of one dollar and twenty-five cents per acre; subject, however, to the rights of any and all persons claiming under act of Congress 3d March, 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

C. BALLANCE.

I, Samuel Leech, register of the land office at Quincy, Illinois, do hereby certify that the fractional q'r section above described contains 147 $\frac{43}{100}$ acres, as mentioned, and that the price agreed upon is $1 25 per acre.

Pre. act 1834.

SAM'L LEECH, *Register.*

LAND OFFICE, QUINCY,
Nov. 9th, 1854.

I, A. C. Marsh, register of the land office at Quincy, Illinois, do hereby certify that the foregoing is a true and correct copy of the original application of Charles Ballance now on file in this office.

A. C. MARSH, *Register.*

2d. The patent issued by the United States to Mr. Ballance for the said land, which is as follows:

Certificate No. 13,293.

The United States of America to all to whom these presents shall come, greeting:

Whereas Charles Ballance, of Peoria county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Quincy, whereby it appears that full payment has been made by the said Charles Ballance, according to the provisions of the act of Congress of the 24th day of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southwest fractional quarter of section nine, in township eight north, of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing one hundred and forty-seven acres and forty-three hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Charles Ballance:

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Charles Ballance, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Charles Ballance, and to his heirs and assigns forever; subject, however, to the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

In testimony whereof, I, Martin Van Buren, President of the Uni-

ted States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

[Seal of the General Land Office.]

MARTIN VAN BUREN.

By the President:

By A. VAN BUREN, *Sec'y.*

H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 3, page 114.

STATE OF ILLINOIS,
County of Peoria.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder in and for said county, do hereby certify the annexed patent from the United States to Charles Ballance for the S. W. sec. 9, 8 N., 8 E., is duly recorded in said office, in book P, page 478, on this 25th day of September, A. D. 1845.

CHARLES KETTELLE, *R. P. Co.*

It was conceded the land in dispute was worth more than two thousand dollars.

The defendant asked the court to give the jury the following instructions:

1st. If they believe from the evidence that the defendant was said Ballance's tenant, and the said Ballance was in possession of a part of the southwest quarter of section nine, claiming the whole thereof for more than twenty years before the commencement of this suit, the plaintiff is not entitled to recover.

2d. That the title shown by the defendant is at law superior to that shown by the plaintiff, and consequently the plaintiff cannot recover in this action.

3d. That if they believe from the evidence that said Ballance (by his tenants) has had the actual possession, by residence on the land in controversy for more than seven years under the title he has exhibited, the plaintiff cannot recover.

4th. That the words in the patent of said Ballance, of January 28, 1838, to wit: "subject, however, to the rights of all persons claiming under the act of Congress of March 3, 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," cannot in law so operate as to lessen the estate vested by the granting part of the deed.

5th. That said clause cannot so operate as to affect the rights of any one but the grantor and grantee to said patent, and persons holding under it.

6th. That whatever else the jury may believe, or disbelieve, in the case, unless they believe from the evidence that the taxes of 1845 on said tract of land so sold for taxes, as aforesaid, were paid before it was so sold, said tax title, and the possession under it, and payment of taxes for seven years previously to the commencement of this suit (if they believe said possession and payment of taxes have been proven,) are a complete bar to plaintiff's action.

7th. That the certificate signed Sam'l Leech, dated Nov. 27, 1837, was, from its date, evidence of a legal title in said Ballance, and such a title as will protect him under the statute of limitations of 1835, provided the jury believe from the evidence that said Ballance has had a tenant living on the premises ever since.

8th. That said certificate, when tested by itself, is a prima facie good title, and when it is used to lay the foundation to obtain the benefit of the said statute of limitations of 1835, it cannot be affected either by the copy of the application on the part of said Ballance to enter said land, nor by said patent to said Ballance, for the reason that they were no part of defendant's case, but were introduced by said plaintiff.

9th. Although the jury may believe, from the evidence, that said assessment and tax sale were void for any irregularity, yet, if they believe said Ballance has paid all taxes levied upon said land since the year 1845, and has had a tenant residing in said house ever since that date, the plaintiff has no right to recover in this action, unless they believe the defendant has been guilty of fraud in obtaining said purchase or possession.

Which instructions, in the form requested, the court refused to give, but instructed the jury to the effect following:

As the extent and boundaries of French claim 63 could not be ascertained until the survey was made and approved, and as twenty years have not elapsed since that time, our twenty years' limitation law can have no application to the case. Besides, the only statement of facts in evidence, as to the possession, shows that though Mr. Ballance has been in possession of some part of the southwest quarter of section 9 for twenty years, yet neither he nor his tenants have been in possession of lot 63 for that time.

That in order to constitute an adverse possession of that lot as against the French claimants, by the possession of another portion of the quarter section by Mr. Ballance or his tenants, as stated, the entry and possession must have been under a claim of title inconsistent with that of the French claimants. If the entry and possession were subject to the rights of the claimants, existing under the acts of Congress, then such possession as stated could not be adverse, so long as that possession did not actually extend to lot 63.

When Mr. Ballance made application for a pre-emption, he stated it was made subservient to these French claims, and when the patent was issued by the government to him for this fractional quarter it was made subject to these claims; therefore the grant made by the government, as contained in the patent, did not necessarily operate as a con-

veyance of the entire quarter to the grantee, but the clause inserted in the patent had the effect of excluding from the operation of the grants that portion of the quarter covered by these French claims; consequently, if, at the time of the grant to Ballance, there was any one capable of taking lot 63, under the acts of Congress of 1820 and 1823, then lot 63 was excluded by law and by the terms of the grant, and was excepted, (in other words, lot 63 was not granted to Ballance,) and he took his title subject to such exclusion or exception.

If all the taxes due to the State have been paid, then the plaintiff is in a position to question the tax-title, by showing, among other things, that the assessment, under which the sale took place, was illegal.

It is not necessary to decide whether the State could tax lot 63 before the issuing of the patent, nor whether this lot is within the restriction imposed by the ordinance of 1818, which prevents the State from imposing a tax within five years after a sale; but no tax could be imposed by the State upon lot 63, till after the survey was approved, Sept. 1, 1840; consequently, if at that time and up to the time the assessment was made, under which the tax sale took place, the person or persons who owned lot 63, under the acts of Congress, did not own, and had no interest in, any of the remaining portion of the 105 $\frac{63}{100}$ acres which were assessed and sold together, then the act of assessing that quantity together was illegal, and was, in effect, compelling one man to pay taxes on the land of another. That lot 63 was granted by the government and surveyed under the authority of a law of Congress, and the officers of the State had no power under any law in force to ignore, as they seem to have done, these rights of property thus granted and recognised.

If Mr. Ballance has had possession of the land in controversy, under claim or color of title made in good faith, for seven successive years, and has paid the taxes for that time before suit brought, then the plaintiff is not entitled to recover; but the tax-title in this case did not accrue to Ballance long enough before the commencement of the suit to make it available as color of title merely.

If the taxes of 1845 on lot 63 were paid, then the sale was illegal, and the proceedings under it would not operate to convey an absolute title.

The certificate of title of Mr. Leech, dated in Nov., 1837, would show the kind of title required by the law of 1835, and if that were the only evidence in the cause, of the character of Mr. Ballance's title, then it might be within the law of 1835; but we cannot separate the title of the defendant into fragments or parcels, but must look at it altogether; and so regarding it, the court is of opinion that the government did not grant, nor intend to grant lot 63 to Mr. Ballance, and therefore he had not, as to that lot, the kind of title which was within the act of 1835.

To the refusal of the court to give the instructions as requested, and to the giving of the instructions which were given by the court to the jury, the defendant then and there excepted.

Exceptions allowed, Feb. 7, 1856.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed Feb'y 12th, 1856.

WM. H. BRADLEY, *Clerk.*

And on the same day, to wit, the 12th day of February, A. D. 1856, said defendant, by his attorney, filed in said clerk's office his writ of error in said cause, which said writ is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the Judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Robert Forsyth, plaintiff, and Charles Ballance and Thomas Meehan, as by their complaint appears; and it being fit that the error, if any there be, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 12th day of February, A. D. 1856, and of our independence the 80th year. [SEAL.]

WM. H. BRADLEY, *Clerk.*

Endorsed: Copy of writ error filed in pursuance of the Statute of the United States in such case made and provided, for the above named Robert Forsyth, def't in error.

C. BALLANCE,
Attorney for Pl'ffs in Error.

Filed Feb'y 12th, 1856.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States of America for said northern district of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said cause of Robert Forsyth against Thomas Meehan and Charles Ballance, in ejectment.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this ninth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-first year.

[L. S.]

WM. H. BRADLEY, *Clerk.*

Filed 19th Feb., 1857.